

AN
ACCOUNT
TO THE
TRIAL
OF
SAM. GEORGE GRANT,
BEFORE A
GENERAL COURT MARTIAL,
HELD AT
CHATHAM BARRACKS,

ON WEDNESDAY, MARCH 21, 1792, AND SEVEN
FOLLOWING DAYS,

For having ADVISED and PERSUADED FRANCIS HERITAGE
and FRANCIS STEPHENSON, Two Drummers of the
Coldstream Regiment of Guards, to DESERT.

By JOHN MARTIN,

OF RICHMOND BUILDINGS, SOHO,
SOLICITOR FOR THE PRISONER;

AUTHOR OF AN INQUIRY INTO THE STATE OF THE
LEGAL AND JUDICIAL POLITY OF SCOTLAND.

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1792.

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AN
ACCOUNT, &c.

THE business of Recruiting, in London, is carried on by Agents, who open Offices in different parts of the Town, for that purpose, and also for receiving such Recruits as are enlisted in the Country, in order to get them approved of, and passed to their respective Regiments.—These Agents are seldom themselves Soldiers, though they assume the character of Serjeant, in order to give effect to their Enlistments, which would frequently be avoided, were it known by the persons enlisted that they are not military men.

On the 25th day of December, 1790, the Prisoner entered into Articles of Co-partnership with James Rutherford, of Charing Cross, in the County of Middle-

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sex,

sex, Viſtualler, reciting, “ That the ſaid James Rutherford is engaged, on behalf of His Maſteſty, and of the Honourable the Company of Merchants trading to the Eaſt-Indies, to inliſt men to ſerve in their reſpective Land Forces and Marines.” By which Articles, in conſideration of the ſum of one hundred and five pounds to the ſaid James Rutherford in hand paid by the ſaid Samuel George Grant, “ the Parties agreed to become Copartners in the inliſting and raiſing men to ſerve His Maſteſty, and the ſaid Company of Merchants, and in the profits and advantages to ariſe therefrom.”

About this time, the Priſoner was employed by Lieut. John Grey, of the 76th Regiment of Foot, to raiſe men for that Regiment; and afterwards he was alſo employed by Captain Alexander Campbell, of the 74th Regiment of Foot, to raiſe men for him.

The terms on which the Priſoner contracted with Captain Campbell were, that
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a sum, equivalent to the pay of a Serjeant, should be paid to him by Captain Campbell, and that the Prisoner should furnish to each Regiment at least twenty Recruits every year, at the rate allowed for by Government; and the Prisoner was empowered by Captain Campbell to draw from the Agents of the 74th Regiment, such sums as, from time to time, should become due to him, or be necessary for this service.

The Prisoner's assiduity and success were remarkable; and Captain Campbell very soon expressed his wish that the Prisoner should enter and be attested. In recommending this to the Prisoner, it is supposed Captain Campbell had two views: 1st, to secure, exclusively, an useful Recruiting Officer; and 2dly, to entitle him to charge the Prisoner's pay against Government, which pay must otherwise come out of his own pocket.

The Prisoner, however, reflecting on the consequences, declined to enter himself;

and he never was either enlisted or attested, nor is his name to be found in any Muster-Roll, or Regimental Return, except such as have been made up for the purpose of meeting him on this Trial.

These facts will be elucidated by the following Letter from Captain Campbell to the Prisoner, dated Leskard, September 30, 1791:—“*Grant*, I have received your Letter of the 17th. I am happy to see you have been so successful, and I expect your particular Return of names and descriptions (of the 24th) by this Post. You would have had a Corporal before this, from Chatham, had he not overstaid his Pass; but I have again, this day, desired one to be sent to you. *You must be approved of at Chatham, and leave your Attestation there.*

“ I have, by last Post, received a Letter from the Agents, inclosing a charge of 1l. 14s. 6d. made by you for pay to men deserted and rejected. They very properly have refused paying it, as Government will

will not admit it; *and you know, my agreement with you is, that, as I am to have no profit by the men you get, I am to sustain no loss.* If Government would allow the charge, you should be welcome to it; but you cannot, in reason, expect me to pay it out of my own pocket. If you will look at the War-Office Letter to Gen. Townsend, of the 14th of October, 1788, which I left with you, it will shew you, that Subsistence is allowed only for such rejected or deserted men as have been previously approved of by Field Officers appointed by General Townsend. I remain your sincere Friend,

“ALEX. CAMPBELL.”

Captain Campbell also, in another Letter, so late as the 14th day of December last, writes to the Prisoner as follows:

“You must know, as well as I can tell you, that I cannot give you an order to receive either your Bounty or Pay, till you are approved of, and your Attestation lodged at Chatham; *neither of which has, I believe, been done.*

“I hope

" I hope and trust, that you have got some men for the 74th this month, *altho' the East India Company's offices are open.*"

About the beginning of January, Francis Stevenson, a Drummer in the Coldstream Regiment of Foot Guards, was imprisoned in the Savoy for having torn his cloaths, and for being dirty; and on this occasion, he repeatedly expressed his determination to desert so soon as he should be set at liberty.

Having obtained his liberty, it would appear that he had persuaded Francis Heritage, another Drummer in the Coldstream Regiment, to accompany him in this desertion; and that a day or two before the 26th of January they applied to Beatty, a Corporal in the 74th Regiment, and communicated their intentions to him. On the 26th of January they put their intention into execution; for they both swore on the Trial, that having come off Guard about half past eleven o'clock that day,

day, they went into several public houses, where they continued drinking until between six and seven o'clock in the evening, when they went to the Prisoner's house, where they were enlisted for the East India Company's Service. During the whole of this transaction, the Prisoner was from home; and having been sent for to look at some Recruits who had then come from Manchester, these two Drummers were pointed out to him as two Recruits who had just come in, and had been enlisted for the East India Company. The Prisoner looked at them, and said, *they were good looking lads*; and asked, if they were attested; and on being informed that their Attestations were filled up, but that they were not sworn, the Prisoner gave two shillings to Corporal Beatty, to get them attested, and they were, that same evening, attested before Justice Addington.

Next morning they were approved of by Major Akerman of the East India Company's Service, and put on board the Melville

ville-Castle East-Indiaman, then lying at Gravesend, Information having been received where these Drummers were, an application was made to the Directors of the East India Company, who ordered them to be delivered up; and on the 1st of February they were committed to the Savoy by Serjeant Darley, of the Coldstream Regiment of Guards.

On the 3d of February, an information was lodged against the Prisoner, before William Addington, Esq. one of His Majesty's Justices of the Peace for the City and Liberty of Westminster and County of Middlesex, at the Public Office in Bow-Street, founded on the 53d section of the Mutiny Act, whereby it is provided, "That if any person shall knowingly detain, buy, or exchange, or otherwise receive from any Soldier and Deserter, or any other person, upon any account or pretence whatsoever, any arms, cloaths, caps, or other furniture, belonging to the King, or any such articles, belonging to any Soldier or Deserter, as
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are generally deemed Regimental necessities, according to the custom of the Army, being provided for the Soldier, and paid for by deductions out of his Pay, or cause the colour of any such cloaths to be changed, the person so offending shall forfeit for every such offence the sum of five pounds; and upon conviction, by the oath of one or more credible Witness or Witnesses, before any of his Majesty's Justices of the Peace, the said penalty of five pounds shall be levied by Warrant under the hands of the said Justice or Justices of the Peace, by distress and sale of the goods and chattels of the Offender; one moiety to be paid to the Informer, and the residue to be paid to the Officer to whom such Deserter or Soldier did belong."

Upon this information, and on the evidence of Stephenson and Heritage alone, the Prisoner was convicted by Mr. Addington in two several penalties, of five pounds each, which were levied by distress upon his goods.

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On the 17th of February, as the Prisoner was walking along the Strand, he was seized by Joseph Turtle, a Serjeant of the Coldstream Regiment, and by him carried a Prisoner to the Recruit House in the Savoy Square, where he was delivered to Serjeant Major Lunt, of the Coldstream Regiment, by whom he was carried to the Savoy Prison.

On this occasion a Warrant in writing for his Commitment, was made by Serjeant Major Lunt, dated the same 17th February; which Warrant stated that he was imprisoned *by order of his Royal Highness the DUKE of YORK.*

Next day a letter was sent from the War Office to the Provost-Martial, in the following terms :

“ WAR OFFICE, Feb. 18, 1792.

“ SIR,

“ I have the Secretary at War's directions to require you to detain in your custody

today Serjeant George Grant, of the 74th Regiment, now confined in the Savoy by order of his Royal Highness the DUKE of YORK, it being intended to bring the said Grant to Trial before a General Court Martial, for having advised two Soldiers of the Coldstream Regiment of Foot Guards to desert, and to enlist into the East-India Company's Service."

I am, SIR,

Your humble Servant,

M. LEWIS.

The Provost-Martial of the Savoy Prison."

And on the 20th of February, a third Warrant was delivered to the Provost-Martial, as follows :

" COLDSTREAM ORDERLY ROOM,

Feb. 20, 1792.

" SIR,

" Receive into the Savoy Prison George Grant, Serjeant in the 74th Regiment of Foot, for enlisting Drummers Francis He-

ritage and Stephenson, of the Coldstream Regiment, into the India Company's Service, knowing them to belong to the above Regiment.

SAMUEL LUNT,

Serj. Major of Coldst. Regt. Guards.

The Provost-Martial."

On the 25th of February, the Prisoner was served with a copy of the following notice:

" JUDGE ADVOCATE'S OFFICE, HORSE
GUARDS, 25th Feb. 1792.

" SIR,

" As a General Court Martial will soon be appointed to be held at *Chatham Barracks*, for the Trial of Serjeant George Grant, of the 74th Regiment of Foot, now a Prisoner in your custody, and charged with He having advised and persuaded Francis ritage and Francis Stephenson, two Drummers in the Coldstream Regiment of Foot Guards, to desert His Majesty's Service; and

and to enlist into the Service of the East-India Company, knowing them at the same time to belong to the said Regiment of Foot Guards; you are hereby required to give the said Prisoner the earliest notice thereof, that he may prepare for his Trial, and make timely application for summoning any Witnesses material towards his Defence.

I am, Sir,

Your most humble Servant,

CHARLES GOULD.

To Capt. Hannam, Provost-Martial of the Savoy."

An application for a Writ of *Habeas Corpus* having been advised, an Affidavit was made by the Prisoner, to ground the application. The substance of that Affidavit is as follows:

That about eight months ago, the Prisoner was employed by Captain Alexander Campbell, of his Majesty's 74th Regiment of Foot, as an Agent to recruit for the
said

said Regiment: That it was then agreed
 between Captain Alexander Campbell and
 the Prisoner, that for this service Captain
 Campbell should allow to the Prisoner a
 sum equal to the Pay and Cloathing of a
 Serjeant of the said Regiment, and all the
 profits to accrue from the difference be-
 tween the Bounty given to the Recruits
 and the allowance from Government; but
 that the Prisoner himself was not inlisted
 as a Soldier in the said 74th Regiment of
 Foot, and that he never received any Boun-
 ty or Inlisting Money; and that he has
 never received any Pay or Cloathing as a
 Soldier; and that no Entry or Return was
 ever made in the Books of the said 74th
 Regiment, of the Prisoner as a Soldier of
 the said Regiment. That since Dec. 25th,
 1790, the Prisoner has also been employed
 as an Agent for inlisting Recruits for the
 Service of the Honourable East-India Com-
 pany; and that some time in the month
 of January last, while the Prisoner was
 sitting in a public-house in the neighbour-
 hood of Charing-Cross, he was informed
 that

that some Recruits had come to his house from the Country, upon which he immediately went to his own house, to examine the Recruits, and while he was so engaged, he was informed that two boys had come in, and had been inlisted; and he did then direct a person who was present to get them attested for the East-India Company's Service: and the Prisoner immediately left his own house, and returned to the public-house from whence he came. That he has been since informed, that the said two boys were two Drummers, of the names of Heritage and Stephenson, belonging to the Coldstream Regiment of Foot Guards; but that at the time they were inlisted for the East-India Company's Service as aforesaid, they had not any military appearance, but were dressed in coarse jackets, and one of them had on a leathern apron; and the Prisoner believed, from their appearance, that they had been Sailors, and were come from the Country. That on the 17th day of February last he was committed a Prisoner to
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the Savoy, by Samuel Lunt, Serjeant-Major of the Coldstream Regiment of Guards, for inlisting the said Heritage and Stephenson into the East-Company's Service, knowing them to belong to the said Regiment of Guards; and that on the 25th of Feb. last he was served with the copy of a Letter subscribed, as he has been informed and believes, by Sir Charles Gould, Knight, His Majesty's Judge-Martial and Advocate-General for the Army, and addressed to Captain Hannam, Provost-Martial of the Savoy, purporting, that a General Court Martial would soon be appointed to be held at Chatham Barracks, for the Trial of Serjeant George Grant, of the 74th Regiment of Foot, a Prisoner in the said Capt. Hannam's custody, and charged with having advised and persuaded Francis Heritage and Francis Stephenson, Drummers in the Coldstream Regiment of Guards, to desert His Majesty's Service, and to enlist into the Service of the East-India Company, knowing them at the same time to belong to the said Regiment of Foot Guards, and thereby

thereby requiring the said Captain Hannam to give the said Prisoner the earliest notice thereof, that he might prepare for his Trial, and make timely application for summoning any Witnesses material toward his Defence."

On this Affidavit the Writ of *Habeas Corpus* was allowed, whereby the Provost-Martial of the Savoy is commanded to have before Lord Kenyon, immediately after the receipt of the Writ, the body of Samuel George Grant, being committed and detained in His Majesty's Prison of the Savoy, together with the day and cause of the taking and detainer of the said Samuel George Grant, by whatsoever name the said Samuel George Grant is called in the same, to undergo and receive all and singular such things as the said Chief Justice should then and there consider of, concerning him in that behalf.

In obedience to this Writ, the Provost-Martial brought the Prisoner before Lord

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Kenyon,

Kenyon, on the 7th of March, when Mr. Joseph White, who appeared as Solicitor for the Crown, and Mr. Thomas Lowten, as Solicitor for the Brigade of Guards, prayed time to make the return, and the Solicitor for the Prisoner not objecting, his Lordship ordered the Prisoner to be remanded, and to be again brought up on the 13th of March; on which day the following Return was produced:

“ I, William Hannam, the Provost-Martial named in the Writ of *Habeas Corpus*, hereunto annexed, do most humbly certify and return to our Sovereign Lord the King, That, by certain Articles of War, formed, made, and established by His said Majesty, in pursuance of, and according to the force of the Statute in that case made and provided for the better government of His Majesty's Forces, it is ordained and established, that whatsoever Officer, non-commissioned Officer, or Soldier, shall be convicted of having advised or persuaded any other Officer or Soldier
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to desert His said Majesty's Service, shall suffer such punishment as by the Sentence of a General Court Martial shall be awarded. And I do further humbly certify and return to our Lord the King, that, on the 17th day of February, in the thirty-second year of the reign of His present Majesty, Samuel George Grant, in the said Writ of *Habeas Corpus* named, being a non-commissioned Officer and Soldier in His said Majesty's Service, in the 74th Regiment of Foot, was taken by Joseph Turtle, a Serjeant in His Majesty's Coldstream Regiment of Foot-Guards, and delivered into the custody of me the said William Hannam, being such Provost-Martial as aforesaid, charged with having advised and persuaded Francis Heritage and Francis Stephenson, Soldiers in the said Coldstream Regiment, to desert His Majesty's Service, and to enlist into the Service of the East-India Company, knowing them at the same time to belong to the said Coldstream Regiment of Foot Guards. And I do further most humbly certify, that the body of

the said George Grant having been so delivered to the care and custody of me the said William Hannam, being such Provost-Martial as aforesaid, is now detained in my custody, to answer the said charge; and also by virtue of an order from His Majesty's Secretary at War, bearing date the 18th day of February aforesaid, requiring me, the said Provost-Martial, to detain in my custody the said Samuel George Grant, by the name of Serjeant George Grant, of the 74th Regiment, it being intended to bring the said Grant to Trial, before a General Court Martial, for having advised and persuaded two Soldiers of the Coldstream Regiment of Foot Guards to desert His Majesty's Service, and enlist in the East-India Company's Service. And this is the cause of taking, and of detaining the said Samuel George Grant, whose body I have, as by the Writ of *Habeas Corpus*, hereunto annexed, I am commanded.

W. HANNAM,
Provost-Martial."

When

When the Prisoner was brought to Lord Kenyon's house, on the 13th day of February, he was informed that a Gentleman was with his Lordship on this business; and when, about a half an hour afterwards, he was admitted into his Lordship's presence, Captain Hewgill, an Adjutant of the Coldstream Regt. of Guards, appeared alone with his Lordship. An Affidavit of the two Drummers, who had been previously sworn, was put into his Lordship's hands by Mr. Lowten; which Affidavit is of the following tenor:

In the KING'S BENCH.

“ Francis Heritage and Francis Stephenson, both Drummers in the Coldstream Regiment of Foot Guards, severally make oath and say; and first this Deponent, Francis Heritage, for himself saith, that on Wednesday the 25th day of January last, he came off duty from the Richmond Party, and that on the next day, Thursday the 26th day of January, between the hours of six and seven o'clock in the
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evening, he, this Deponent, with the above named Francis Stephenson, went into the King's Arms public-house at Charing-Cross, kept, as he believes, by George Grant, who is, as this Deponent is informed and believes, a Serjeant in His Majesty's 74th Regiment of Foot, and whom this Deponent well knows in that character, having taken a Recruit to him to be enlisted, and sat down in a box and called for a pint of beer; and this Deponent further saith, that at the time when he and the said Francis Stephenson went into the King's Arms public-house, he and the said Francis Stephenson were dressed in their respective Regimentals, and that Stephen Battow, who assists the said George Grant, and is a Corporal in the said 74th Regiment, as this Deponent has since been informed and believes, brought them a pot of beer, and sat himself down in the same box: And this Deponent further saith, that he and the said Francis Stephenson, being ordered for Guard the next morning, he observed to Francis Stephenson, that they
had

had none of their cloaths clean, and that it was late, and impossible for them to be upon Guard the next morning: That the said Stephen Battow then went out of the said box, and returned again soon afterwards, and addreſſing himſelf to this Deponent and ſaid Francis Stephenson, told them, that Mr. Grant ſaid, if they would go and diſguiſe themſelves, and come again, he would engage them for the Eaſt-India Company's Service, which was preferable to the Guards, as they might there make their fortunes; that Deponent replied, that he had nothing to diſguiſe himſelf with, nor had Stephenson any thing: That the ſaid Stephen Battow ſaid he would get them ſomething, and immediately went up ſtairs, and ſhortly after returned, with the ſaid George Grant: And this Deponent further ſaith, that the ſaid George Grant delivered to this Deponent a brown coat, a pair of check trowſers, and a round hat; and he, this Deponent, put them on, and delivered his Regimental jacket to the ſaid George Grant; and that the ſaid

said George Grant delivered to Francis
 Stephenson a pair of black breeches, an
 old leather apron, and a round hat, which
 Stephenson put on, and delivered to the
 said George Grant a Regimental coat and
 hat; and Grant then conducted them into
 a back room, telling them they might have
 whatever they liked to eat and drink: And
 this Deponent further saith, that after he
 and the said Francis Stephenson had re-
 mained there some short time, another per-
 son came into the room, and after writing
 on two different pieces of paper, which
 were partly written and partly printed, he
 asked this Deponent and said Stephenson
 if they could write? and this Deponent
 replied yes; that he then put a paper be-
 fore each of them, desiring them to write
 their names on it, which this Deponent
 and said Stephenson did: And this Depo-
 nent further saith, that the said man ne-
 ver read the contents of said papers to
 them in the said room, but gave them to
 the said Stephen Battow, who, on the same
 evening, took this Deponent and the said
 Francis

Francis Stephenson to Mr. Abington's, in St. Margaret's Church-yard, Westminster, where the said Stephen Battow delivered the said papers to a young man who was sitting at a desk in the Office, who asked the Deponent and the said Francis Stephenson if they were Apprentices or Militia-men? and then gave them a book; but what he said, this Deponent does not recollect: And this Deponent further saith, That the said young man did not read the contents of the said papers to them, nor asked them if they were willing to serve as Soldiers in the East-India Company's Service: That this Deponent and the said Francis Stephenson then went back with the said Stephen Battow to Grant's house, leaving the said papers with the said young man at Mr. Abington's, to be signed; and that about eleven o'clock in the same night this Deponent and the said Francis Stephenson went to bed, and got up about ten o'clock next morning, when the said Stephen Battow brought them a pot and a pint of two-penny to
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drink, and four rolls for breakfast : And this Deponent further saith, That after they had breakfasted, the said Stephen Battow told this Deponent and the said Stephenson, that they must go to the East-India House to be passed : That he, this Deponent, and said Stephenson, with three other Recruits, and the said Stephen Battow, went into a coach at Grant's door, which drove them to a house on Tower-Hill, appointed by the East-India Company for the inspection of Recruits for the East-India Service, where they got out, and after being inspected and passed, the said Stephen Battow delivered this Deponent and the said Francis Stephenson to the care of John Barratt, who is an Assistant to Grant in recruiting for the East-India Company, who conducted this Deponent and said Stephenson to the Queen's-Head Ale-house, in Darkhouse-lane, Billingsgate, and locked them in a room at the top of the house, and left them for about half an hour, when he returned with a pot of beer and some dinner ; and after staying

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ing in the room with them some short time, he again left them, locked in, and returned again in about an hour with a bowl of rum and water, and told them, after they had drank it to go to bed, as they were to get up at two o'clock next morning: And this Deponent further saith, that before said John Barratt brought their dinners, he took from Deponent his Regimental waistcoat and breeches, and gave him a flannel waistcoat; that he took from said Stephenson his Regimental waistcoat and breeches: That he, this Deponent, and said Stephenson went to bed, and got up between three and four o'clock the next morning, when said Barratt put this Deponent and said Stephenson, with others, on board a boat belonging to the East-India Company, which took them to the Melville Castle, East-Indiaman, lying near Gravesend, and that they went on board the same, where Deponent and said Stephenson received the Uniform belonging to the East-India Company, which they put on: That Deponent and said Stephen-

son remained on board the Melville Castle five days, when they were fetched away by Serjeant Darley, belonging to the said Coldstream Regiment : And this Deponent saith, that before he and the said Francis Stephenson went to bed at the Queen's Arms Ale-house, in Dark-House Lane, the said John Barratt told them, that if they were apprehended or caught, not to mention Mr. Grant's name, nor that of poor Jack Barratt. And this Deponent, Francis Stephenson, for himself saith, that the whole and every part of the foregoing Affidavit of the said Francis Heritage is strictly true.

FRANCIS HERITAGE,
FRANCIS STEPHENSON."

*" Sworn at my house, in Lincoln's
Inn Fields, the 13th of March,
1792, before KENYON.*

Lord Kenyon having perused this Affidavit, called for the Return of the Writ,
which

which his Lordship having also perused, the Prisoner's Attorney prayed his Lordship to allow him a Copy of the Return, and a reasonable time to examine the same; and that in the mean time the Prisoner might be remanded. To this request his Lordship answered nearly in the following words:—"I certainly will remand him; for, Sir, if you know any thing of your Profession, you must know that I am bound by the Return, whether true or false, and cannot enquire whether the Prisoner is a Soldier or not. He is imprisoned by a Warrant from the Secretary at War, as a Soldier. I must take the Return to be true, and therefore I remand the Prisoner. He may bring his Action for a false Return, if he pleases; but I think he has been very ill advised—very ill advised, indeed."—

The Prisoner's Attorney again begged his Lordship to indulge him in his original request, of a short delay till he could consider the Return; but the only answer which Lord Kenyon could be prevailed on
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to give was—" *I remand him—I remand him*":—upon which the Attorney made his bow, and retired. And having obtained a copy of the Return, he next day addressed the following Letter to his Lordship, containing his observations thereon :

" RICHMOND BUILDINGS,

March 14, 1792.

" MY LORD

" As in the case of Grant, brought before your Lordship yesterday, by virtue of a writ of *Habeas Corpus*, your Lordship was pleased to say that the Prisoner had been ill advised, and to refuse to allow me to state any objection to the return of the Writ, I take this method of submitting to your Lordship the objections which I was prepared to have made.

1st, The first Commitment by Turtle is *by parole*, and therefore not a lawful Commitment ; but supposing it to be *in writing*, there is no averment that a Serjeant has authority to commit; and in fact
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a non-commissioned Officer has not such authority.

“ 2dly, As to the other Warrant : it is not an original Commitment, but a Detainer ; and therefore if the original Commitment is not in writing, the Detainer, as depending thereon, is void. It is also a Commitment by a Secretary at War, without naming him ; nor is there any averment, that as such Secretary he had power to grant this Commitment ; and in fact the Secretary at War has no such power.

“ The reason of not naming the Secretary at War will appear plain to your Lordship, upon perusing the Warrant itself. It is a mere Letter from Mr. Lewis, (but who Mr. Lewis is, is not stated) informing the Provost-Martial that he, Mr. Lewis, had “ the Secretary at War’s directions to require him.” But even Mr. Lewis does not add, “ you are hereby required

quired accordingly," or any other words amounting to a positive Commitment.

" Farther, the Prisoner is detained " for having advised and persuaded *two Soldiers*," without naming them.

" And lastly, there is no legal conclusion in the Warrant, for the Prisoner is not detained till he shall be delivered in due course of law, but *sine die*. There is, indeed, an insinuation of " it being *intended* to bring the said Grant to Trial before a General Court Martial ;" but when, or where, or whether at all this Court is to take place, is not stated.

" It is also observable, that in the Warrant by Mr. Lewis the original Commitment is said to have been " *by order of His Royal Highness the DUKE of YORK*;" but such order does not appear by the Return, nor are the directions by the Secretary to his Clerk set out.

" I hope

“ I hope your Lordship will excuse this trouble. I consider myself bound by my oath of office to do justice to my Client, and therefore have taken this method of submitting what your Lordship refused to hear me state *viva voce*.

“ I have the honour to be,
My LORD,
Your Lordship's most obedient,
and very humble Servant,

J. MARTIN.

“ *The Right Honourable*
LORD KENYON,” &c. &c.

We proceed now to the Trial itself.---
And I have endeavoured to find some plausible reason for holding this Court at Chatham, and not in London, but in vain. I cannot suppose that it was so ordered, that the Prisoner might be deprived of the means of defending himself, or at least that his expences might be increased.---
I cannot suppose, that His Royal High-
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ness the DUKE of YORK could not trust this Prosecution in the hands of Sir Charles Gould, and of Officers of the Regiments of Guards.----I cannot suppose, that His Royal Highness could be of opinion that the Prosecution would be better conducted by a Military Deputy Judge-Advocate, than by the learned Judge-Advocate who has long, and honourably, filled that office at the Horse Guards.---I cannot suppose, that His Royal Highness wished this Trial be conducted in a secret manner, at a distance from Newspapers, and from other vehicles of public information.---Nor can I suppose, that it was so ordered, as a compliment to Corporal Beatty, in order to save that respectable Officer the trouble of coming to London, to give his evidence.---In short, I cannot suppose any reason that would be satisfactory, and therefore leave it to be explained by those who are in the secret, with this assurance, that I am willing to suppose it was so ordered, not from any partial or oppressive motive.

On

On Wednesday the 21st day of March the Trial commenced at Chatham Barracks.

The Charge being read, the Prisoner was asked by the Deputy Judge Advocate if his name was Samuel George Grant; to which he answered in the affirmative.---He was then asked, if he acknowledged himself to be Serjeant Samuel George Grant, of the 74th Regiment of Foot; and to this question the Prisoner answered in the negative.---To which the Judge Advocate replied, that the Prisoner is Serjeant Samuel George Grant, of the 74th Regiment of Foot, and that he was ready to prove it.

The Prisoner's Attorney then informed the Judge Advocate that he wished it to be understood, that the Prisoner declined the jurisdiction of the Court, and that he was ready to deliver such plea in writing, or in such other manner as was agreeable to the Practice of Courts Martial; but the Judge Advocate informed him, that he

must reserve it till he came on his Defence, and that he would then be entitled to the full benefit of it.

Captain Wynyard, one of the Adjutants of the Coldstream Regiment of Guards, then stood forward, and informed the Court, that he had the commands of His Royal Highness the DUKE of YORK to prosecute the Prisoner; and he then read a Paper, stating the case, nearly in the words of the Affidavit of the two Drummers, sworn before Lord Kenyon.

Witnesses were then called to prove the Prisoner to be a Soldier; but as it is not my present object to enter into a detail of the evidence, I will not therefore trouble the Reader with observations as to the facts themselves, except in so far as they are connected with the CONDUCT of this Prosecution, which is the present object of this Publication. The Prosecutor, in open Court, declared it to be his intention to lay these Proceedings before the Public.

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He has also in like manner pledged himself, through the medium of a Newspaper,* so to do. When they appear, the Public will be able to judge how far any single fact, necessary to substantiate the Charge, has been proved.

The Prosecutor may have judged it prudent that the Evidence produced in support of this Prosecution should not be too generally known. But as these Proceedings disclose facts too important to be kept secret, I also pledge myself to the Public, that so soon as I have a right, I will demand a Copy of these Proceedings ; and so soon as such Copy shall be received by me, it shall be printed and published.*

Before

* See the WORLD of Saturday 31st March

* By the 9th clause of the Mutiny Act it is provided,
 " that the party tried by any General Court Martial,
 within Europe (except in the Garrison of Gibraltar)
 shall be intitled to a Copy of the Sentence and Proceedings
 of such Court Martial, upon demand thereof, made
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Before the Examination of the first Witness was finished, the Prisoner was sufficiently apprised of the disposition of the Deputy Judge Advocate towards him. That Witness, (Mr. Bonus, Clerk of Mess. Bishop and Brummell, Agents for the 74th Regiment and for Captain Campbell) was examined by the Prosecutor, to prove the hand-writing of Captain Campbell; and accordingly, without observation from Major Brownrigg, and without objection from the Prisoner, the Witness was allowed to prove three Letters written by Captain Campbell, by swearing generally to his belief, founded on his knowledge of the hand-writing of Captain Campbell. But on the Cross Examination, when the Prisoner produced the two Letters from Capt. Campbell to him, already stated, the Judge Advocate objected to these being received on the Testimony of Mr. Bonus, as to his

by himself or by any other person on his behalf, (he or they paying reasonably for the same) at any time *not sooner than three months after such Sentence.*"

his belief alone, unless the Witness could swear that he saw Captain Campbell actually write these Letters. But the Court, *after mature deliberation*, received the Evidence; the President observing, that this Evidence was admitted in favour of the Prisoner, *because it had been admitted against him*. It was therefore a fortunate circumstance for him, that the Prosecutor had first found it necessary to resort to this kind of proof; for had that not been the case, it would seem that the Prisoner must have lost the benefit of this material Evidence, because he could not produce a Witness who had been looking over the shoulder of Captain Campbell when he wrote a private Letter from Cornwall, which came to the Prisoner's hands in the usual course of the Post.

The first question to be determined was, *Whether or not the Prisoner is actually a Soldier?* And here another preliminary question presents itself, viz. *By whom shall this question be determined?* The Common Law
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of England, on this point, is strongly expressed in the 18th Chapter of *Magna Charta*. “ *No man shall be taken or imprisoned, or be disseised of his freedoms or liberties, or free customs, or be outlawed or exiled, or any otherways destroyed; nor we will not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land.*”

By the *lawful Judgment of his Peers*, Lord Coke says, is meant the Verdict of his Equals, that is, of men of his own condition; and by the *Law of the Land* is meant, *the due course and process of Law*. And as the Common Law is superior to the Military Law, the Military Law being rather *indulged* than *allowed*, a greater extent of jurisdiction cannot be taken by the Military Courts than what is expressly and in positive words granted to them. The Common Law Courts of England acting under the Common Law itself, have an absolute jurisdiction which cannot be taken from them but by positive Statute. Every
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Court, therefore, thus erected as an exception from the general jurisdiction, must be confined strictly within the bounds of the jurisdiction so granted to it, and is so far subject to the control of the Superior Common Law Courts, that its Proceedings may be stopped by Prohibition; and an Action will lie against the Judges of such Inferior Courts themselves, at the suit of the injured Party, to recover damages for having exceeded their jurisdiction. It is evident, then, that according to the course of the Common Law, the Prisoner can only be cut off from civil society by the Verdict of a Jury of his Country, according to the due course of the Common Law; and that the Judges of this Court Martial have exceeded their jurisdiction, in determining the question, Whether the Prisoner was a Soldier or not, unless it can be shewn, which it is impossible to do, that by the express and positive words of the Mutiny Act, they have a special jurisdiction, in exception to the general jurisdiction of the Common Law.

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The Prisoner will even carry his argument a little farther; and it will be no difficult matter for him to shew, that not only is the Mutiny Act silent as to this jurisdiction, but that in every case in which it becomes necessary to determine the civil or military state of a man, the jurisdiction is taken out of the hands of Military Men, and placed exclusively in the Civil Magistrate. Thus, by the 71st clause of the Mutiny Act, persons inlisting are to be carried before a Justice of the Peace, or other Magistrate, to be attested, such Justice, &c. "*not being an Officer in the Army.*"

In like manner, though Desertion is, by the Mutiny Act, a capital offence, yet a Military Court cannot take cognizance of it in the first instance, nor can the Deserter even be committed to prison till the fact of his being a Deserter is sworn to before a Justice of the Peace, or other Magistrate; for by the 51st clause of the Mutiny Act it is enacted, " That it shall and may be lawful to and for the *Constable, Headbo-
rough,*

rough, or Tithingman, of the town or place where any person, who may be reasonably suspected to be such a Deserter, shall be found, to apprehend, or cause him to be apprehended, and to cause such person to be brought *before any Justice of the Peace*, living in or near such town or place, who hath hereby power to examine such suspected person; *and if*, by his confession, or the testimony of one or more Witness or Witnesses upon oath, or by the knowledge of such Justice of the Peace, *it shall appear or be found that such suspected person is a listed Soldier*, and ought to be with the Troop or Company to which he belongs, *such Justice of the Peace* shall forthwith cause him to be conveyed to the gaol of the county or place where he shall be found; or the House of Correction, or other public prison, in such town or place where such Deserter shall be apprehended; or to the Savoy, in case such Deserter shall be apprehended within the City of London or Westminster, or places adjacent; and transmit an account thereof to the Secre-

tary at War for the time being, to the end such person may be proceeded against according to law."

And by the 54th clause it is provided, "That no Commission Officer shall break open any house, to search for Deserters, without Warrant from a Justice of the Peace; and that every Commission Officer who shall, without Warrant from one or more of His Majesty's Justices of the Peace, (which said Warrants the said Justice or Justices are hereby impowered to grant) forcibly enter into, or break open, the dwelling-house or out-houses of any person whatsoever, under pretence of searching for Deserters, shall, upon due proof thereof, forfeit the sum of twenty pounds."

If this Adjudication by the Military Court is good, it carries with it the most alarming consequences to the Liberty of the Subject: for thereby the Civil Liberty of every man in the Kingdom is placed
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under the control of Courts Martial, who may, if they please, adjudge any man to be a Soldier, and punish him by Martial Law ; and the present Trial affords a striking instance, how far Military Men may be disposed to extend their jurisdiction upon a Prosecution instituted by command of a Prince of the Blood Royal. For it would appear, that as this Court had determined to try the question themselves, they were also disposed to adjudge him to be a Soldier upon any evidence that could possibly be brought before them. Two days were spent in endeavouring to prove the Prisoner to be a Soldier, but the only evidence of the fact were, 1st, the Letters of Captain Campbell, calling the Prisoner a Sergeant :---2dly, a Return made by Captain Campbell, received by the Agent only two days before the Trial, in which Captain Campbell states the Prisoner to be enlisted on the 25th day of June, 1790, and to have been approved of by Colonel Fox :---3dly, a Receipt granted by the Prisoner to Messrs. Bishopp and Brummell for a sum of money, which

which is stated in the Receipt to be for Pay and Subsistence, and which Receipt is signed *Samuel George Grant, Serjeant 74th Regiment.*

But if Captain Campbell's Letters to his Agent, calling the Prisoner a Serjeant, are to be evidence of his being a Soldier, the Captain may very easily raise a Regiment, instead of a Company, for he may by the same rule, make any man a Soldier, by the simple operation of writing a Letter to his Agent, calling him a Soldier. If a Return made up for the purpose of meeting him on this Trial is to be admitted, no man is safe; for it is remarkable, that though in this Return Captain Campbell states the Prisoner to have been enlisted on the 25th day of June, 1791, and to have been approved of by Colonel Fox, on the same day, yet in his Letter, dated the 14th day of December thereafter, he says, "I cannot give you an order to receive either your Bounty or Pay till you are approved of, and your Attestation lodged at Chatham ;

ham; neither of which has, I believe, been done." No proof of an actual Inlistment was adduced. It was admitted the Prisoner never was attested, and it was proved that he never was inspected and approved of; and that though a List of Soldiers, approved of at Chatham, is regularly kept, yet that the Prisoner's name was not inserted in that List. Colonel Fox, indeed, endeavoured to account for this, and to prove that *in this particular case* it was not necessary that the Prisoner should be personally examined. But though Captain Campbell may be obliged to Colonel Fox for his ingenuity in finding something like an excuse for him, for making this false Return, the fact is clearly established, that the Prisoner was not approved of by Colonel Fox; and the point, whether the Colonel's reason is good or bad, not being a matter necessary to be now adjusted, the Prisoner will leave the discussion of it at present, especially as it may probably be determined at a future time by the proper Tribunal.

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When the Receipt is examined, it will appear to be equally unconvincing; and it may be said, that this is the first time that an Inlistment has been attempted to be established on such a ground. The Prisoner was, as has been already observed, a Recruiting Agent; he was in possession of Beating Orders, every one of which are addressed to him by the stile of Serjeant. It was necessary he should, both in public and in private, assume the stile of Serjeant; because no person, except a commissioned or a non commissioned Officer, can inlist a Soldier; and if it had been generally known, that the Prisoner had not a legal authority to enforce his Inlistments, he could never have depended on procuring a single Recruit. He might have found a great number of persons, who would readily accept of the Inlisting Money, and then laugh at him; and his only remedy to recover it back would have been by an Action at Common Law.

But Captain Campbell's Letters prove clearly, that there was an Agreement between

tween him and the Prisoner, different from that between an Officer and his Serjeant; for in his Letter of the 30th of September he says, “ I have by last Post received a Letter from the Agents, inclosing a charge of 1l. 14s. 6d. made by you for pay to men deserted and rejected. They very properly have refused paying it, as Government will not admit it; and you know, *my Agreement with you is, that as I am to have no profit by the men you get, I am to sustain no loss.* If Government would allow the charge, you should be welcome to it; but you cannot in reason expect me to pay it out of my own pocket.” And Captain Campbell’s Letter of the 14th of December farther proves, that he knew the Prisoner acted not only as a Recruiting Agent for the 74th Regiment, but that he acted also in that capacity for the East-India Company; for in that Letter he says, “ *I hope and trust you have got some men for the 74th this month, altho’ the East-India Company’s offices are open.*” But had Captain Campbell considered the Prisoner to be a Soldier under

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his command, it is not to be supposed that he would have been contented with using such moderate expressions, or have submitted to the Prisoner's keeping an office open for the East-India Company, when men were so much wanted for the 74th Regiment, and when, by *the word of command* alone (and which command it was his duty as an Officer to have given, if the Prisoner had been his Serjeant) he could have compelled the Prisoner to have returned all his Recruits to the 74th Regt.

Though then this Receipt, on the face of it, bears to be granted for Pay and Subsistence, from the 25th of June, it is evident, that the money itself was money actually due upon the Agreement between Captain Campbell and the Prisoner; for, that on the 14th of December Captain Campbell did not suppose the Prisoner to be a Soldier, and the Receipt was granted in those terms, merely for the satisfaction of the Agents; it having been proved not to be uncommon for persons not Soldiers

diers to grant such Receipts, and in those Receipts to stile themselves Serjeants of the Regiments on whose account the money was paid. If then Captain Campbell himself did not inlist the Prisoner, as it is admitted he did not, the first question to be asked is, Who did inlist him? and the answer which must be given is, that he was inlisted by Messrs. Bishopp and Brummell. But had he been inlisted, in like manner, by the Bishop of London, such Inlistment would have been equally invalid. It is not pretended, that Messrs. Bishopp and Brummell are themselves either commissioned or non commissioned Officers; therefore they have not power legally to retain any man as a Soldier, and every Inlistment performed by them, tho' done in the most direct and unequivocal manner, is void, unless the person so inlisted shall afterwards either be attested or join the Regiment. But in this case, it is not pretended that ever the Prisoner was attested, or that ever he joined the Regiment, or did duty as a Soldier, or that he

ever wore the Uniform, or carried the Arms of a Soldier.

Captain Williamson indeed proved, that he had seen the Prisoner in an Uniform of the 74th Regiment; but on his Cross Examination he confessed, that it was rather the Uniform of a commissioned than that of a non commissioned Officer; and tho' it was also proved, that he received a Regimental Sword and Belt, yet the Witness, a Serjeant in the 74th Regiment, who proved it, confessed that he gave them to the Prisoner by mistake, supposing him to be a Serjeant; but that when he found his mistake, and that the Prisoner was not a Soldier, he, in a day or two afterwards, took them from him.

The next question to be asked, as to this Receipt, may be, Has the money mentioned in it to have been paid to the Prisoner, as Pay and Subsistence, actually been allowed by the Public, as such, in the Regimental Account? And this question was com-

completely answered by Mr. Bonus; for on his Examination he swore, that the money mentioned in this Receipt was charged not against the Regimental Account, but against the *private* Account of Captain Campbell; and by the Evidence of that Witness it was clearly proved, that against such private Account it must stand: for the Witness declared it to be necessary, in order to entitle Capt. Campbell to charge this money against the Public, that one of three things should be done--- 1st, *That an Attestation be produced*, which cannot be done in this case: 2dly, *That the Prisoner be approved of by a Field Officer*, which has not been done here: or 3dly, *That the person's name be inserted in the Muster-Roll from Chatham*, which has not been yet done. If, therefore, the money mentioned in this Receipt is not the Public Money, and cannot be charged against the Public, but is the private money of Captain Campbell, it cannot be denominated Pay and Subsistence, in the sense in which the Prosecutor

cutor wishes to have it understood, so as to hold the Prisoner to be a Soldier.

The Prisoner therefore contends, that being only a Recruiting Agent, and not being actually a Soldier, he is not liable to be tried and punished by Martial Law.--- The Mutiny Act, in so far as it is a penal Statute, must be strictly construed; and unless the Prisoner is a Soldier, literally within the express letter and meaning of the Law, he cannot be tried and punished. By the 71st clause of the Mutiny Act, it is provided and declared, "That from the 24th day of March, 1791, when and as often as any person or persons shall be inlisted as a Soldier or Soldiers in His Majesty's Land Service, he and they shall, within four days, but not sooner than twenty-four hours after such inlisting respectively, be carried before the next Justice of the Peace of any County, Riding, City, or place, or Chief Magistrate of any City or Town-corporate, (not being an Officer in the Army) and before such Justice

tice or Chief Magistrate he or they shall
 be at liberty to declare his or their dissent
 to such inlisting ; and, upon such declara-
 tion, and returning the Inlisting Money.
 and also each person so dissenting paying
 the sum of twenty shillings for the charges
 expended or laid out upon him, such per-
 son or persons so inlisted shall be forth-
 with discharged and set at liberty, in the
 presence of such Justice or Chief Magis-
 trate ; but if such person or persons shall
 refuse or neglect, within the space of twen-
 ty-four hours, to return and pay such mo-
 ney, as aforesaid, he or they shall be deem-
 ed and taken to be inlisted, as if he or
 they had given his or their assent thereto
 before the said Justice or Chief Ma-
 gistrate ; or if such person or persons shall
 declare his or their having voluntarily
 inlisted himself or themselves, then such
 Justice or Chief Magistrate shall, and
 he is hereby required forthwith to cer-
 tify under his hand, that such person or
 persons is or are duly inlisted ; setting forth
 the place of the birth, age, and calling, of
 him

him or them respectively, if known, and that the second and sixth sections of the Articles of War against Mutiny and Desertion were read to him or them, and that he or they had taken the oath mentioned in the said Articles of War; and if any such person or persons, so to be certified as duly inlisted, shall refuse to take the said Oath of Fidelity before the said Justice or Chief Magistrate, it shall and may be lawful for such Officer, from whom he has received such money as aforesaid, to detain or confine such person or persons until he or they shall take the oath before required; and every Military Officer that shall act contrary hereto, or offend herein, shall incur the like penalty and forfeiture as is by this Act to be inflicted upon any Officer for making a false and untrue Muster; and the penalty and forfeiture shall be levied and recovered in the same manner as any penalties or forfeitures are by this Act to be levied or recovered."

As by this clause it is made necessary that a person inlisted shall, within four
days

days after his Inlistment, be carried by the Officer who inlisted him before a Justice, it is impossible, in the present case, to deem the Prisoner a Soldier, for he never received any Bounty or Inlisting Money; he never was carried, either by Captain Campbell, Messrs. Bishopp and Brummell, or by any other person, before a Magistrate; he never was attested; no Pay has been allowed for him from the Public; he never has (at least till after his Imprisonment) been returned by Captain Campbell, and at this moment his name is not to be found in any Muster-Roll; he has never joined the Regiment, nor done any Regimental Duty; he never was in possession of the Arms or Accoutrements, and he never wore the Uniform Cloathing of a Serjeant. In short, he never did any thing, which in Law or in Justice could place him in the station of a Soldier; but on the contrary, he has avoided doing those acts which are essential to fix a man in that station. He has indeed granted a Receipt to Messrs. Bishopp and Brummell for money,

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ney, and in such Receipt the payment has been expressed to have been for Pay and Subsistence, and he has signed such Receipt as a Serjeant of that Regiment ; but these, he contends, are not sufficient circumstances to prove him a Soldier. He may have called himself Captain, but that will not entitle him to a Commission. The Agents, in drawing up the Receipt in that way, followed the usual course of their Office ; and the Prisoner, in granting such Receipt, did no more than is every day done by men who never were considered to be Soldiers : but, as has been already stated, the money itself contained in that Receipt, was not charged against the Regiment, but is a charge made by the Agents against the private Account of Captain Campbell, and there it must stand. Finally, if an Indictment is to be reared up against the Prisoner on such a slight foundation, the Recruiting Business, at least in London, will suffer a material injury ; as it must be evident to every Gentleman who has ever been in that line, that the transient residence

dence of a common Serjeant would, in London, be attended with little, if any success.

Whatever then may be ultimately the determination upon this point, the Prisoner solemnly protests that he never had the most distant idea that he was actually inlisted as a Soldier. If he is a Soldier of the 74th Regiment, he is also a Soldier of the 76th Regiment; a Marine and a Soldier in the Service of the East-India Company; and he may with equal propriety be claimed by all these different Corps; nay, in point of right, the other have a preferable claim to the 74th Regiment, in as much as his engagements with the 76th Regiment, and with the East-India Company, are of prior dates to his connection with the 74th Regiment.

But it has not only been the uniform opinion of the Prisoner himself, and of the Officers under whom he acted, that he is not a Soldier; but the Conduct of those

who have promoted this Prosecution, affords convincing evidence, that till very lately, even they did not entertain an idea of his being a Soldier; for so lately as on the 3d of February last they proceeded against him as a Civil Person, and as a person not subject to the Martial Law, upon the 53d clause of the Mutiny Act, before stated.

The Prisoner contends, that as a Military Man he could not be convicted under that clause, but as a Civil Person only; for, from the whole tenor of the Statute, it is clear, that where a Military Person is intended, the words used are, *any Officer or Soldier*; and the jurisdiction of a Court Martial is also uniformly established as the remedy against such Officers and Soldiers; but when the Law affects persons not in a military capacity, the words used are, "*any person or persons*," and cognizance of the offence is given to the Civil Magistrate only. If then the Prisoner was a Soldier at the time this offence was committed,

mitted, these Prosecutions before the Civil Magistrate were unlawful, and the Prosecutors having resorted to that proceeding, shews clearly their own sense of the matter---that the Prisoner was a Civil Person, and that he was not a Military Person, subject to be tried in a Court Martial. It was in open Court acknowledged by the Prosecutor, that so early as in June last, he knew the Prisoner had protected himself from being impressed by his Beating Orders. If therefore such loose circumstances will constitute a man a Soldier, why did the Prosecutor first oppress the Prisoner as a Civil Person, and on the back of that conviction bring him to Trial in this Court Martial, when he knew long before the Civil Prosecution, and at least as well as he does now, that the Prisoner was as much a Soldier then, as when he was brought to a Military Trial; and that if he was a Soldier, he could only be prosecuted by the Military Law for a Military Offence.

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Upon the whole, the Receipt excepted, this Inlistment is supported only by that kind of Evidence which may make any man a Soldier. A Captain writes Letters, styling him a Serjeant, and he makes Returns of him as a Serjeant; but nothing is found done on the part of the Prisoner to correspond with those essentials which the Law has required to be done on his part, who was to be affected by those Letters and Returns.

The preliminary points being settled, and the Court having determined that the Prisoner was a Soldier, he was then called on to answer to the Charge, which he did, by pleading the General Issue, *Not Guilty*; and the Prosecutor called Francis Heritage as his first Witness; against whom the Prisoner objected, that he and Stephenson were not competent Witnesses to convict him of the crime of which he was accused. These two Drummers could not be viewed in any other light than of that description of Witnesses, who, for the sake of public justice,

justice, are often necessarily produced in the Criminal Courts of this Country, to wit, men who, having committed a crime in company with others, get themselves admitted Evidences for the Crown, in order to keep their necks out of the halter: but in such cases, a Prisoner is never convicted on the Evidence of an Accomplice alone; and indeed it is an invariable rule, that an Accomplice shall not even be allowed to be examined, till a foundation for the Prosecution is first laid by the Testimony of other Witnesses, whose credit is not liable to be impeached. These two Drummers have committed a crime, by deserting from their Regiment; they have broke their Oath of Allegiance to His MAJESTY; they were liable, by the Military Law, to be put to death. It became necessary, therefore, for the preservation of their own lives, that they should add the crime of Perjury to those of which they had already been guilty. Having told their tale once, it was equally necessary that they should persevere in it; but this "*unvarnished tale*," as the Prosecutor

cutor was pleased to term it, is so destitute of the necessary varnish, viz. TRUTH, as to put it out of the power of Credulity itself to believe it.

“ In the case of Informers (says a late Author) whose veracity should ever be suspected, and whose conduct should be carefully watched, experience shews the necessity of caution in the admission of their evidence. Can the wretch, who, from the dread or certainty of punishment, sinks into the basest of all human characters, the Betrayer of the Secrets of his Friend, or who, spurred by the hope of gain, aims, for a few pounds, at the life of his fellow creature—can he be trusted in the testimony he may advance in the prosecution of his treachery ?” Mercy tells us, no. The attributes of Justice and of fair Benevolence are decked in robes of kindness and humanity : Calmness and Deliberation attend them in their course. Suspicion is awake, but unerring Truth is ever more
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their guide." * And the same Author (p. 55) again observes, that " Judges in a Martial Court of Law are happily disengaged from an adherence to a rule which eventually may entail destruction on the unfortunate. Accomplices, in every light they can be placed, cannot but be seen in guilt; but if, in addition to their first crimes, they afterwards give evidence against those by whom they have been intrusted—if, in the excess of baseness, they exert their faculties to crush their unsuspecting Brethren, and screen themselves, How little is their Evidence to be credited? Examine, therefore, with ten-fold rigour, such Witnesses, if they shall appear before you; search with a probing hand into the recesses of their souls; doubt and investigate the commonest circumstance they advance; and as they have already proved themselves detestable among men, so look upon their

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* See THOUGHTS ON MARTIAL LAW, with a Mode recommended for Conducting the Proceedings of *General Courts Martial*, by Richard Joseph Sullivan, Esq. p. 45.

evidence, when truth cannot be discriminated, as the effusion of depravity itself."

Had the Court Martial, in this case, attended to these advices, the Prisoner would not need to have made the objection against the competency of these Witnesses; far less would it have been over-ruled;—but over-ruled it was, and Heritage and Stephenson were permitted to be examined, to lay the foundation of the Evidence of this Prosecution.

The Prisoner, knowing as he did, that these young men had already committed Perjuries, and had been brought there on purpose to repeat them, was willing, from motives of humanity, to suppose them to be ignorant of the nature and obligation of an Oath: he could not believe it to be possible, that two boys, of sixteen years of age, should, if they ever had received any religious education, be so far lost to their duty to their God and to Society; and therefore he requested that the following questions might be put to them:

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1st, Do you know for what purpose an Oath is now administered to you ?

2. Do you know the religious obligation of an Oath ?

3. Do you believe in a future state after your Death ?

4. What do you expect will then become of you, if you should this day wilfully declare what is false to the Court ?

But no sooner was the first of these questions put, than the Prisoner was told by Lord Newark, the President, that such questions were foreign to the issue, and therefore improper. Religion was treated with ridicule, and the Deputy Judge-Advocate, Major Brownrigg, went so far as to observe, in the presence of the Witnesses, and of a Court crouded with private Soldiers, that, *he did not know that a Soldier had any thing to do with Religion, and that the best Soldiers often had the least of it.*

The indecency of this sentiment was not taken notice of, or contradicted by the Court.---It is unnecessary to animadvert on the impropriety of the Prisoner being tried by Judges avowing such sentiments, and on the evidence of Witnesses in whom the ignorance and disregard of their duties to God and to Society are esteemed to be good qualities. It need only be recommended to these Judges, before they take the judgment seat again, to peruse the first Section of the Articles of War, and seriously to consider the dangerous tendency of giving so pointed a sanction to Irreligion in the Army. If Religion shall be considered even to be an unnecessary qualification in a Soldier, the Obligation of an Oath must necessarily be held to be void; and nothing is more to be dreaded to the State, than the putting of Arms into the hands of Troops who have not a proper knowledge and sense of their Oath of Allegiance to their King, or of the awe of religious Rewards and Punishments,

ments, to enforce their duty, and the protection which they owe to their Country.

Heritage having been sworn, the Prosecutor moved, that his former Deposition, taken before Justice Addington, at Bowstreet, on the 3d of February, should be read; and in order *to save the time of the Court*, that the Prisoner might be asked, whether or not the contents of that Deposition were true? To this the Prisoner objected---but in vain. The Court allowed it. The Deposition was read, and the *unvarnished tale* therein told, was affirmed by the Witness in the lump.

The Prisoner was desirous of producing an Office Copy of the Affidavit of the Drummers Heritage and Stephenson, sworn before Lord Kenyon, which has been already inserted. The reason for which the Prisoner wished this Affidavit to have been produced, was, that it might be compared with their Information, taken at Bowstreet, before Justice Addington; and from
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such comparison it would have appeared evident, that the arrangement and expressions of every sentence of both are so exactly alike, that it is impossible to suppose that the person who drew the Affidavit had not the Bow-street Information before him as a Model. There is one material fact, however, stated in the Bow-street Information, which does not appear in the Affidavit, viz. *that these two Drummers were both drunk at the time they went into the Prisoner's house, on the 26th day of January last.* The reason why so leading and so important a fact was suppressed in the Affidavit, ought to have been given by the Prosecutor.--- When the Prisoner found this fact, as to their drunkenness, to be first stated in the Information, and afterwards left out in the Affidavit, he suspected that there was a reason for its being withdrawn: he therefore wished, by the Cross Examination of Heritage and Stephenson, to get at the reason of this; but he was stopped by the Court, who (though they sat patiently under every kind of inquiry instituted by the

Prosecutor,

Prosecutor, yet they) on this, and many other occasions, expressed their disapprobation of the Prisoner's questions, and here they refused to allow him to proceed. But it was very material for the Prisoner to fix, with precision, the state of these two Drummers; and it was the duty of the Solicitor for the Prosecutor, who drew this Affidavit, when he saw the Prisoner struggling under the displeasure of the Court, and charged with improper conduct, to have been so candid as to have relieved him. But at this moment the suppression of this fact is unaccounted for.

The Prisoner is far from thinking, the objection made by the Prosecutor against the admission of an Office Copy of an Affidavit, was not *strictly legal*. The Court had a right to expect that the best evidence of the fact, viz. the Affidavit itself, should have been produced. But this deficiency was not owing to him, but was one of those hardships which he suffered from being carried to be tried at a distance from
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the place where the fact charged against him was committed; and at a distance from his Witnesses. To have carried Lord Kenyon's Clerk to Chatham, and to have paid him for his attendance and his expences during this Trial, in order to produce the Original Affidavit, would have cost about thirty guineas; a sum of money which the Prisoner could not afford. His Attorney, therefore, took an Office Copy of the Affidavit, which was carefully examined by Lord Kenyon's Clerk, and by the Attorney, with the Original Affidavit. The Prisoner offered to produce it, and to call on the Attorney, to prove the examination and authenticity of the Copy; but the Court, as has been already mentioned, rejected it. But by and by the Prosecutor finds it necessary to prove another fact, and he is allowed to do it on evidence far slighter than that offered by the Prisoner, and equally illegal. He produced a Certificate, by Justice Addington, of the Conviction before him, which the Court admitted as evidence, on the oath of Captain Wynyard,

Wynyard, that he saw Mr. Addington sign the Certificate: but whether the fact so certified was true or not, was not proved, for Captain Wynyard confessed he did not examine the Certificate with the Conviction, to see if it was truly certified. Besides, a Certificate of a Record cannot be admitted to prove the tenor of such Record; nothing less than the Original Record, or an Office Copy, proved by a Witness, being sufficient.

The Drummer Stephenson was next called; and the Prosecutor prayed, that in order to save the time of the Court, the Bow-street Information might also be read over to him, and authenticated by the same general question that had been put to Heritage; and in order to prevent this illegal and lumping mode of Examination, the Prisoner was obliged to insist positively, that the Deposition should not be read, but that he should be examined relative to the different facts proposed to be proved by the Witnesses, which the Court

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at last consented to. However, he had got his story so well by heart, that he agreed with his Comrade in most of the material circumstances.

On the Cross Examination of these Drummers it appeared, that they came off Guard at St. James's, about eleven o'clock in the forenoon of the 26th of January; that they went to drink, and continued drinking from that hour till between six and seven o'clock in the evening; that during that time they had been in several public-houses, but, although they had been four years in London, they could not recollect in what houses they were, nor even the names of the streets, the quantity of liquor they had drank, or the persons in their company. Heritage indeed says, a young lad from the country was with them, but Stephenson could not recollect any person except his Comrade Heritage.

They both confessed, that they had quarrelled and fought in the Savoy; but here
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again their recollection totally failed them as to the cause of their quarrel: and Stephenson positively swore, that he never had been a Prisoner in the Savoy, except for this Desertion.

It is unnecessary to say much as to the other Witnesses examined by the Prosecutor, as none of their Evidence was applicable to the Charge against the Prisoner; and they were brought forward merely to furnish materials for a HISTORY of CRIMPING, which the Prosecutor declared it to be his intention to publish. The first observation that occurs on the Evidence of these two Drummers, is, that they, who have each been about four years in London, should have been in several public-houses on the 26th of January, and only be able to recollect one of them. There seems to be here an unaccountable deficiency of recollection. In the former part of the day, during their more sober hours, they cannot recollect where they were, or how much liquor they had drank; but no sooner

do they get into the Prisoner's house, and have drank there a considerable quantity of liquor more, than, all at once, their recollection returns, and it is strengthened in proportion to the quantity of liquor they drink. Every pint and every pot is accurately mentioned; every word that passed in conversation is remembered;---and indeed not a circumstance that happened is forgotten, or even stated doubtfully: nay, they are so minute in their recollection, that after they must have been very drunk indeed, they recollect the words mentioned by Justice Abington's Clerk, when they were attested; for they both agree in saying that the Clerk asked them *if they were Apprentices, or if they belonged to the Militia.*

On this part of their Evidence, in which they swear that the Clerk asked them these two questions *only*, another remark presents itself. This answer seems to be so guarded, in order to wipe off the imputation of Perjury, under the pretence that they never were asked, and never answered
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also that *they were not Soldiers*. Their own Affidavits, sworn before Justice Abington, and signed with their own hands, contradicted them in this; for they expressly bear that these Drummers upon their oaths said, that *they were not Soldiers*. The Affidavits are conclusive evidence against them, and the Drummers do not pretend to say, or even insinuate, that the Justice's Clerk was desired by the person who brought them, not to ask the question, or that the Clerk had the smallest hint that they were Soldiers, or that he connived at the Inlistment. Knowing, then, as the Prosecutor must have known, that this part of their Deposition ought to have been supported by other Evidence than that of these two Drummers alone, it seems strange that Justice Abington and his Clerk, who both attended as Witnesses, should not have been examined. The Drummers, in their Affidavit before Lord Kenyon, swear, that the Justice's Clerk did not read to them the contents of the Affidavit they took before him. This will readily appear to be another cir-

circumstance of their caution not to appear to have perjured themselves. They have said in the course of their Examination before the Court Martial, that they did not see Justice Abington ; but they may as well attempt to falsify their Affidavit, taken before Lord Lord Kenyon, because they did not see his Lordship when the Oath was administered to them by his Lordship's Clerk in the passage of his Lordship's house. In fact, they did not on that occasion see Lord Kenyon, and it is the constant practice of every Judge and Justice in England to sign Affidavits as taken before them, if at the time of the Affidavit being sworn to, they are in an adjoining room, or in any part of the house, without either the Justice himself administering the Oath, or admitting the Deponent into his personal presence.

One farther observation on the Evidence of these Drummers, is, that in the Information taken before Justice Addington at Bow-Street, it is sworn to by them, that
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being ordered for Guard the next morning, Heritage observed to Stephenson, " that they had none of their cloaths clean, and that *it was late and impossible* for them to be upon Guard the next morning;" and this is literally copied in the Affidavit taken before Lord Kenyon. But in the Evidence of Stephenson, taken before the Court Martial, this impossibility is, for the first time, attempted to be explained away; for Stephenson swore, that he offered to pay for the pint which they had, observing that *unless they went home immediately, they would be too late, or it would be impossible* for them to get their cloaths cleaned. This story, however, of offering to pay the reckoning, and of giving this as a reason, that unless they went away, it would be impossible for them to clean their cloaths, is contradictory to their Information and Affidavit, both upon oath; so that if their former Depositions were true, their Evidence before the Court Martial must be false. Upon this point, therefore, the Prisoner wished to cross examine
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the Witnesses; but this was opposed by the Prosecutor, and it was disallowed also by the Court; nor did the Prosecutor endeavour to explain why the Witnesses should be believed, when stating a matter to be only conditionally impossible, which they had again and again sworn to as a matter of absolute impossibility.

Though the Prisoner might have rested his Defence on the incompetency of the Witnesses for the Prosecution, yet he was willing to wipe off every imputation which might be supposed to remain: he therefore called three Witnesses, by whom it was proved, that though Stephenson had positively sworn, that he never was a Prisoner in the Savoy, except for this Desertion, yet that, not many days before, he had been a Prisoner in the Savoy for being dirty and tearing his cloaths; and that then he declared to the Witness, Haynes, that he would desert so soon as he could get his liberty. That when he was brought into the Savoy with Heritage, in the Uniform

form of the East-India Company, the Witnesses said, " Stephenfon, I fee you are a man of your word ;" to which Stephenfon answered, that he was. That on the evening of the day before which they were taken out of the Savoy to be examined, Heritage accused Stephenfon of having perfuaded him to desert, which Stephenfon did not deny, but struck him, and they fought on that occasion. That next morning, while they were cleaning themselves, previous to their Examination, they agreed to charge the Prisoner with this offence : and on their return to the Savoy, they told the Witness, Haynes, on his observing, that perhaps they had accused an innocent man, that they would swear any thing, even against their own fathers, to get through the piece.

Independent, then, of the objection against the competency of these Drummers as Witnesses, the Prisoner proved clearly, that the Drummers were not, in fact, entitled to credit, and that, too, by Witnesses

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whose veracity was not liable to any suspicion; and, indeed, whose situation, as Military Prisoners, placed them under the influence of Military Power, and naturally made them wish to say as little as possible in favour of the Prisoner, upon a Prosecution instigated by such high Military Power as the present. Every attempt was made, by Cross Examination, to bring out, from the history of the military lives of these Witnesses, something that might throw a shade upon their Evidence: and though the Deputy Judge-Advocate took great care to impress on the minds of the Drummers, and other Witnesses for the Prosecution, that they were not bound to criminate themselves, yet no such caution was given to these poor ignorant men; and one of them (Jones) having incautiously acknowledged himself to be a Deserter, the Deputy Judge-Advocate was uncandid enough to take down such confession in his Evidence. But laying the Evidence of Jones totally aside, the fact was clearly proved by Haynes, and in some respects confirmed

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ed by Malone, that this Desertion had been planned by Stephenson long before Jan. 26; and that the Prisoner had been accused by the Drummers for the sole purpose of saving themselves from punishment. But if any doubt could remain as to this fact, the Prisoner has farther to complain of the injury and injustice he has suffered, in being sent to Chatham to be tried; for Samuel Thornhill, a Prisoner in the Savoy, would have fully confirmed all the Evidence of Haynes, besides proving some other facts very material for the exculpation of the Prisoner. Thornhill was ordered to attend the Trial; but on his being called, the Prosecutor stated that he was unable, from indisposition, to attend. The Prisoner is willing to believe what the Prosecutor stated to be true, though he did not produce any Evidence of the fact to the Court. But as Thornhill's Evidence was so material and necessary, the Prisoner prayed either that the facts which he should state, and which he expected to be proved by that Witness, should be admitted by

the Prosecutor ; or that some method, by deputation or otherwise, should be adopted, to give the Prisoner the benefit of his Evidence. The Prosecutor declined making any admission, and the Court declared that they could not examine a Witness by deputation, or otherwise than by Adjournment to the Savoy, which last they declared they would not do.

But supposing even this branch of the Evidence for the Prisoner to be doubtful, the doubt was wholly removed by the Evidence of Ann Wright, the Prisoner's servant, who swore, that the Prisoner went out of his house before one o'clock in the afternoon of the 26th of January : That some Recruits having come from Manchester, he was sent for to come from the house at which he dined, to look at these Recruits : That between six and seven o'clock the two Drummers came into the kitchen, where she was, dressed in the manner they have stated in their own Affidavit : That the Prisoner came in soon *afterwards,*

terwards, but that before he did come in their Attestations had been filled up : That a person of the name of Dymond, addressing the Prisoner, said, “ Sir, I have got two fine lads for you, for the East-India Company ; upon which the Prisoner asked, *Where are they ?* Dymond then pointed them out to him. The Prisoner observed, *they were two good looking lads*, and asked if they had been attested ? and having received for answer, that they were not, but that their Attestations were made out, the Prisoner gave Beatty two shillings, and directed him to get them attested ; and the Prisoner immediately left his house, and returned to his company, where he stayed till past twelve o’clock at night. And this Witness farther confirmed the Evidence of the Drummers, that the whole space of time during which he was in his own house did not exceed ten minutes. It was farther proved by this Witness, that she saw the Prisoner come in : That he was within her sight during the whole of the time he was in the house, and that he could not
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have assisted in disguising the Drummers without her observing it : That in fact he did not assist in disguising the Drummers ; and that such articles of Cloathing, as those in which they were dressed, never were in the Prisoner's house, and could not have been there without her having seen them.

And here, again, as in every stage of this business, the Prisoner felt the hardship of being tried at Chatham, for in this very important part of his Case he was deprived of one of his most material Witnesses. The Witness, Ann Wright, swore, that Samuel Youens came into the house with the Prisoner, and remained in his company during the whole of the time that he was in the house, and returned with him to the company they had left. This Mr. Youens received a Summons to attend as a Witness for the Prisoner. He did attend at Chatham six days ; but being unable longer to leave his business in London, he returned without being examined ; and though the Prisoner sent an Express after him to London,

don, he could not be prevailed on to return to Chatham, and not being a Military Man, he could not be compelled. The Prisoner is willing to suppose that the Prosecutor himself had not any intention of depriving him of Mr. Youens's testimony; but it is a fact of rather a singular nature, that Mr. Youens should have been, as he was, invited to dine and drink wine every day with the Witnesses for the Prosecution, and that his expences on those occasions should have been paid, as they were, by the Prosecutor.

The next circumstance which it is necessary to mention is this :

The Drummers, in their Evidence, had sworn, that when they were inspected and passed as Recruits for the East-India Company, they were asked no questions whatever.

Mr. Morris, an Agent of the East-India Company, was afterwards examined as an
Evidence

Evidence for the Prosecution : and the Judge Advocate cross examined him, observing with a degree of triumph, that he would get out of him something of the History of Crimping for the East-India Company; and insinuating, at the same time, that it would appear, that the Agents for the East-India Company were in the practice of decoying men from his Majesty's Service, and the better to do so, that the Recruits were passed without asking them any questions. Mr. Morris, however, in the course of his Examination, swore, that he saw these lads brought in; that he could not recollect particularly as to their Examination, but that there were certain questions which must have been asked them, as they were invariably put to every Recruit.

Upon this, Captain Bunbury, one of the Judges started up, and in the most indecent and passionate manner struck his fist upon the table, and addressing the Witness, said, "*by God, I'll be damn'd if I believe*



I believe a word that you say ;" and this scandalous behaviour was suffered to pass without the least animadversion from the Court.

Mr. Morris, upon the request of the Prisoner, went to London, and got an Order from the Court of Directors of the East-India Company, that Major Akerman, the Officer who had inspected and passed the two Drummers, should attend the Trial. Major Akerman was examined accordingly, and he fully confirmed the Evidence of Mr. Morris. He proved, that the practice was to bring in five Recruits at a time, and that before they were passed, they were asked certain questions, which the Author does not recollect. And on his being cross-examined, whether he was in use to wait for an answer to the questions, he answered in the affirmative—that he asked the questions, and waited till they either verbally or otherwise testified their assent.

The Prisoner was frequently put in mind by his Judges of the very *great indulgence* of the Court towards him. For what indulgence he received, he is humbly thankful; his situation required it, and every Court ought to look favourably on a man accused of a crime for which (if he shall be convicted) a severe punishment may be inflicted. But he would ask, in what this great indulgence consisted, unless it is to be considered as matter of indulgence, that he had a Trial of any kind? One of the Judges, on the second day of the Trial, asked the Prisoner's Solicitor, *how he could think of disputing that the Prisoner was a Soldier?* The answer given was, *that the Prosecutor had not yet proved him to be a Soldier:* on which the Judge very *wisely* asked, *how could it be thought that Sir Charles Gould would send any man to be tried by them, who is not a Soldier?* If, then, the Prisoner was to be deemed a Soldier, because Sir Charles Gould had sent him to be tried at Chatham, the same reason might perhaps operate for finding him guilty of the crime.

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It has puzzled me, however, not a little, to find a single instance of indulgence shewn by the Court in favour of the Prisoner, though many instances of extraordinary indulgence can be produced in favour of the Prosecution. One fact will, perhaps, place the indulgence of the Court in a proper point of view. When the Drummer, Heritage, was under Examination, the Prisoner's Solicitor happened to look the Witness in the face, perhaps steadfastly, in doing this he neither intended nor did harm; upon which, the Prosecutor, in a dictatorial style, addressed the Court, *hoping they would order that ugly fellow to stand back, and not to stare the Witness in the face.* An order was given accordingly, to which the Solicitor bowed obedience. Afterwards, the Prisoner having asked what the Prosecutor was pleased to call *impertinent* questions, Captain Wynyard, in open Court, declared, that *he wished he could meet the Solicitor any where but in that Court, his respect for which only, tied up his hands:*—and such threat, too, was

suffered to pass unnoticed by the Court. This convinced the Prisoner that he had little to depend on from the protection of the Court; and when his Solicitor offered, in the most respectful manner, to call on the Court for their protection, he was stopped short by the President and Deputy Judge-Advocate, and told he had no right to speak: upon which, Mr. Lowten, Attorney for the Prosecution, in the usual style of his Covent-Garden Address, but whose right to speak was no better than mine, was permitted to vociferate, "*Turn him out! turn him out!*" with impunity.

If to refuse to put questions to the Witnesses, which the Prisoner tendered, is an indulgence, he certainly received the indulgence of the Court in a very great degree; and he may also, in this class of indulgences, place a total refusal to examine Witnesses whom he called, or to allow them to be sworn. The Prosecutor had publicly avowed, that the reason why Justice Addington (a Witness summoned by the Prisoner) did not attend, was, that he,
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the Prosecutor, had told him (the Justice) that his attendance would not be necessary: the Prisoner called him, therefore, to give his reason for keeping back this Witness; but the Court refused to allow him to be sworn. The Prisoner also called Serjeant Turtle, and Serjeant-Major Lunt, both of the Coldstream Regiment of Guards, to prove other facts, which would have disclosed some of the leading features of this Prosecution. He was so far indulged as to be allowed to ask two introductory questions of Turtle, but was immediately stopped short—the Witness was discharged, and the Court refused to allow Lunt to be sworn. No objection, however, was stated against the competency of these Witnesses, nor was any reason given for denying to the Prisoner the benefit of their Evidence, other than that the calling of them was *an abuse of the indulgence of the Court.*

Whatever reason then the Prisoner has to thank the Court for their indulgence, surely the Prosecutor has equal reason to
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applaud such indulgence---every Witness he called was received without objection--- every question put without exception, and every *bearsay* tale or idle story listened to with attention; once indeed, the Judge Advocate, after having ingrossed an enormous quantity of extraneous matter in the Proceedings, took the liberty of asking the Prosecutor, *if he thought* the object of his Examination connected with the charge against the Prisoner? The Prosecutor candidly answered, no: but that this Trial would certainly be published, and it was his wish to introduce as much of the History of Crimping into it as possible. The Court assented, and as it was no part of the duty of the Prisoner's Solicitor, and far less was it his inclination, to check any inquiry which might tend to suppress Crimping, the Prosecutor was permitted to swell the Proceedings to an enormous bulk, and to take up more time in detailing, by his Witnesses, the *History of Crimping*, than was allowed to the Prisoner for the whole of his Defence; for in fact the
 Prisoner

Prisoner had not been an hour on his Defence, till the Court began to find fault with him for delaying them unnecessarily.

I shall only mention another remarkable instance of the *indulgence* of this Court towards the Prisoner. On Saturday, the 24th of March, the Prosecutor declared *that he closed the Evidence for the Prosecution*. The Prisoner immediately was called on for his Defence, which he produced; but the Judge Advocate requested he would then withdraw it, and call his Witnesses, observing, that his best way would be to include the whole of his case in a *Summary*, after the Evidence on both sides was closed; and in compliance with this opinion the Prisoner withdrew his Defence, and proceeded to the Examination of his Witnesses. After the Prisoner had called all the Witnesses who had attended, or whom the Court would permit him to examine, he also declared the Evidence of his Defence to be closed; and was told that he could not afterwards be permitted to examine any more
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Witnesſes. The Priſoner then produced
 his Obſervations in writing, by way of
Summary of his Defence, which were read
 by the Judge Advocate. The firſt para-
 graph of that Paper is in theſe words---
 “ the Priſoner is now arrived at the *laſt*
 ſtage of this buſineſs, and he is extremely
 ſorry that he has been laid under the ne-
 ceſſity of diſcloſing a ſcene of Perjury and
 of Infamy hardly to be paralleled in the
 annals of any Court of Juſtice.” The
 Judge Advocate was here ſtopped by a ge-
 neral cry from the Court of “ *a libel!---a
 libel!* ”---And the Proſecutor, with the
 laudable view, no doubt, of puniſhing the
 perſon who ſhould be guilty of accusing
 theſe *virtuous* Drummers of the *Coldſtream*
 Regiment, of ſo atrocious a crime, beg-
 ged the permiſſion of the Court to aſk me,
 Whether or not I was the Author of the
 Paper then in the hands of the Judge Ad-
 vocate? To which I readily answered, that
 I was; and upon this aſſurance, the Paper
 was allowed to be read to the end without
 interruption, the Judge Advocate obſerving
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that it was in the power of the Court afterwards to expunge any part of it which they might deem improper.

The Judge Advocate then asked the Prosecutor, if he had any thing more to offer to the Court, and he then claimed a right to reply. To this the Prisoner assented; and a Paper of Observations were read by Captain Wynyard, and delivered into the Court. He then informed the Court, that Corporal Beatty, a material Witness, was forthcoming, and he begged leave to call him, to substantiate his Charge. But to this the Prisoner objected, it being contrary to every rule of judicial proceeding, to permit a Prosecutor, after finding his case to be totally overturned, to begin again, and examine other Witnesses in support of his Charge.

In support of the Prosecutor's demand, the following passage from Major Adye's Treatise on Courts Martial (page 102) was quoted :---“ The Evidence on both

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sides being heard, and the Prisoner having made his Defence, the Prosecutor has a right, in case he finds it necessary, to make a Reply. By a Reply is to be understood, a right of *observing upon the Evidence* in general, which cannot be done until it has been heard on both sides, *and also* a right of controverting, by Evidence, *any new matter* introduced by the Prisoner in his Defence."

The Prisoner did then, as he does now, admit the rule here laid down to be just. He had no objection that the Prosecutor should be permitted to deliver in any *Observations upon the Evidence* which he pleased; nor did he oppose his right of controverting, by Evidence, *any new matter* introduced by the Prisoner in his Defence. The Prosecutor, however, contended, that under the rule here laid down, he was entitled to bring Witnesses to prove his Charge, and to supply the defects of his Evidence in chief. The Prisoner, on the other hand, argued, that as the Prosecutor had chosen to rest
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his Prosecution on the Evidence of the two Drummers alone, he could not now, that their testimony had been discredited, resort to the Evidence of other Witnesses; and the only point open to him was, to invalidate the Evidence of the Prisoner's Witnesses, by proving that they ought not to be believed; and the Prisoner contended, that any future Examination should be confined to *new matter*, and that an unlimited latitude could not be given to the Prosecutor in examining his Witnesses.--- That this is the true sense of the Rule stated by Major Adye, is evident from that part of the passage which has been already quoted; but if any doubt could remain, it is clearly done away by the subsequent part of the same paragraph:---“ And as Courts Martial (continues the Author) are inclined to grant every reasonable indulgence to a Prisoner, he is generally permitted, upon application, to give in his Answer to the Prosecutor's Reply, which is termed a Rejoinder: but this is rather a matter of special favour than of right, for

he has already had his opportunity of stating the Evidence on both sides, and *can have no new matter to controvert, because the Prosecutor is by no means at liberty to produce any in his Reply.*"

The *indulgence* of the Court was in this case, however, manifested in a very great degree. The Court was cleared, and after mature deliberation, it was determined, that the Prosecutor might examine his Witnesses not only on any new matter arising out of the Defence, but generally to prove the Charge. Beatty was then examined, and undoubtedly his Evidence is at variance with that of all the other Witnesses, both for the Prosecution and for the Defence. He swore that the two Drummers came to him at the Prisoner's house, and communicated to Beatty their intention of deserting; but he does not say that the Prisoner was present, or that the conversation between Beatty and the Drummers was ever communicated by him to the Prisoner. This fact alone, if it is true,
totally

totally does away the Charge; for it establishes this, that these two Drummers were not advised and persuaded to desert, but that they actually committed the crime of their own accord; and that if there was any advice or persuasion, it was used by Beatty, or by some other person, and not by the Prisoner.

The Prisoner is here charged with being what in the common Law Courts is called an *Accessory before the fact*: unless, therefore, his privity to this Desertion can be proved prior to the actual commission of the crime, (whatever might be his share in the business afterwards) it is impossible to convict him on the present Charge. Beatty admits, that Stephenson came into the Prisoner's house, disguised; and it is evident that both of these Drummers came into the house for the express and sole purpose of being enlisted into the Service of the East-India Company. The crime of Desertion was therefore completed before they entered the door of the Prisoner's house: and

and even taking the fact as stated in Beatty's Evidence, it goes no farther than this, that after they had deserted, and after they had been enlisted by Dymond, and not by the Prisoner, into the Service of the East-India Company, the Prisoner assisted in changing their dress, to enable them to pass before the Magistrate when they were attested.

If then, as is the case, no previous accession to the crime has been proved, the Prisoner will not spend time in arguing on the other part of the charge, viz. *for Enlisting Stephenson and Heritage into the Service of the East-India Company, knowing them at the same time to be Soldiers*—for this is only matter of aggravation, and not matter of charge, as neither in the Mutiny Act, nor in the Articles of War, is there such a crime specified; and consequently, where there is no law, there can be no transgression.

I cannot dismiss Corporal Beatty without observing, that it seems impossible to
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believe his Evidence, without imputing Perjury to the Witnesses on both sides.— The Drummers swore, that they *both* came into the house in their Regimental Dress. Beatty says, that Heritage came in his Regimental dress, but that Stephenson was disguised. All the Witnesses agree, that the time during which the Prisoner was in his house on this occasion, did not exceed *ten minutes*; but Beatty at first swore, that he was in the house an hour, and it was with great difficulty that the Deputy Judge Advocate could beat him down to three quarters of an hour. In short, the testimony of this Witness, Beatty, is so contradictory to that of Ann Wright, that it becomes a question as to the credit of both. The only reason on which she is to be discredited is, that she is a Servant of the Prisoner; but her situation, in that respect, may be changed at the pleasure of either party. Corporal Beatty's engagement is of a different kind: he has, *since this affair*, been promoted from being a Corporal to be a Serjeant; but it appears from Capt. Campbell's

Campbell's Letter to Messrs. Bishopp and Brummell, that his promotion is suspended *till the event of this business*. If these two Drummers were at all disguised, it is evident Beatty had a share in the transaction; he was therefore strongly interested to save himself from punishment; and he may also be presumed to have been influenced to throw the blame on the Prisoner, from the prospect of promotion.

It is also impossible for me to ascribe the conduct of the Prosecutor on this occasion to pure motives; and though it was attempted to discredit the Witnesses for the Prisoner, if it could have been made to appear that they had even *spoken* to him, or to his Attorney; yet it appears, and can be proved, that something more than mere conversation has passed between Beatty and the Prosecutor on this occasion. Besides the prospect of a halbert, he has, in order to induce him to accuse the Prisoner, been told, that Beatty himself is justified for whatever he did, *be having been ordered so*
to

to do by the Prisoner, whom, as his Serjeant, he was bound to obey. By this rule, then, if a Serjeant orders his Corporal to commit a crime, the Corporal is bound to obey such order: and this doctrine naturally leads me to suspect that Beatty has also received an order from some Superior or other to tell the story which he did. The Prosecutor produced and read to the Court a Paper signed by Beatty, which, no doubt, contains valuable materials for the History of Crimping; but he could not be prevailed on to deliver it, to make a part of the Proceedings: and this circumstance, however immaterial, tends to shew, that the Prosecutor did not hesitate to practise himself, what he would have reprobated, had it been done by the Prisoner.

Besides, Beatty resides in the Garrison—the Prosecutor had this Witness at hand, and he knew also the full amount of his Evidence. To keep so material a Witness back, and rest the Prosecution on the testimony of two perjured men alone, there-

fore require to be accounted for; and I can only account for it in this way. Had Beatty been brought forward in the first instance, along with the other Witnesses for the Prosecution, it would have been proved, by the Evidence of Malone, one of their own Witnesses, that Beatty was not to be believed, for that he had confessed that he had been compelled to sign the Paper above-mentioned, from the dread of punishment, and from the hope of promotion; but that he, at the same time, confessed to Malone, that though Beatty himself knew that these two lads were Soldiers, yet that the Prisoner was then totally ignorant of that fact.

Lastly, the *indulgence* of the Court was strongly expressed in their refusal to allow the Trial to be kept open till next day; that he might have time to send for Malone, who had been discharged in consequence of the Prosecutor having closed his Evidence without calling Beatty; and he

he cannot consider this *Reply* in any other view than a Trick, to establish Beatty's Testimony, by keeping it back, till it was known that Malone was out of reach.

The COURT MARTIAL consisted of the following Officers, viz.

PRESIDENT,

Col. JOHN LORD NEWARK, 3d Regiment.

MEMBERS,

Lieut. Col. RICHARDSON, 3d Regiment.

Major WRIGHT, Royal Artillery.

Capt. CHARLTON, Do.

Capt. SMITH, ~~Queen's~~ Rangers.

Capt. CHAMPAGNE, 3d Regiment.

Capt. DUVERNET, Royal Artillery.

Capt. BLACKER, 62d Regiment.

Capt. O'HARA, 67th Regiment.

Capt. HAY, 3d Regiment.

Capt. BALFOUR, Do.

Lieut. RIOU, Royal Artillery,

Lieut. PROVOST, 3d Regiment.

Lieut. BROOKE, 20th Regiment.

Lieut. BUNBURY, 62d Regiment.

Lieut. PETRIE, 3d Regiment.

DEPUTY JUDGE ADVOCATE,

Major BROWNRIGG, 49th Regiment.

POSTSCRIPT.

THE Prisoner might have stated the *hardships* he has suffered, in aggravation of his Case. During the first four days of his Imprisonment in the Savoy, he was, notwithstanding the inclemency of the weather, not allowed fire; nor was any person, not even his Wife, permitted to see him. When he was brought before Lord Kenyon, though carried in a coach, and escorted by six armed Soldiers, he was hand-cuffed: and the following Letter will explain what he was perhaps farther to have suffered, had not His Royal Highness the DUKE of YORK humanely been pleased to order the Prisoner to be carried to Gravesend by water.

RICH.

RICHMOND BUILDINGS, DEAN-STREET, SOHO,

March 17th, 1792.

“ I humbly beg your Royal Highness's pardon for this Letter, which my duty, as Solicitor for Samuel George Grant, compels me to write. Your Royal Highness's name has been used (and that in my hearing) to afflict and greatly agitate the mind of the Prisoner, my Client, who has been assured, by the only authority which in his situation he can obtain, that your Royal Highness has ordered him to be marched on foot to Chatham, loaded with heavy irons.

“ I humbly intreat your Royal Highness to believe, that such assurances gained no credit with me; and that I dare not credit them, because the unhappy man, by such unnecessary fatigue and suffering, immediately previous to his Trial, would be rendered incapable of defending himself against a Charge of which he protests his innocence: but the apprehension of such
a treat-

(III)

a treatment, and of its consequences, requires to be removed from his mind ; and for that purpose I venture, as my duty directs me, to be an humble Petitioner to your Royal Highness.

I am,

With the greatest submission,

Your Royal Highness's

Most obedient humble Servant,

J. MARTIN,

SOLICITOR FOR SAMUEL GEORGE GRANT,

A PRISONER IN THE SAVOY."

His Royal Highness the Duke of York, &c.

After the Trial had closed the following Petition was presented to His MAJESTY.

TO THE

KING'S MOST EXCELLENT MAJESTY,

*The humble Petition of Samuel George Grant,
a Prisoner in your Majesty's Garrison at
Chatham,*

SHEWETH,

"That your Majesty's humble Petitioner is laid under the necessity of throwing himself at the feet of your Majesty, as the Fountain of Justice, to complain of the Proceedings of the General Court Martial, acting under your Majesty's Royal Warrant, in the Trial of your Majesty's Petitioner.

"Your Majesty's Petitioner humbly presumes, that his case involves in it the
most

most serious and important consequences to the liberty of every subject in the land. Your Majesty's Petitioner is not, and never was a Soldier, nor had ever the intention of becoming a Soldier. And the Civil Power alone can determine the question, Who shall be deemed, and who shall not be deemed a Soldier? And no Military Court or Power can determine such a question. Your Majesty's Petitioner therefore humbly contends, that the adjudication of him, as a Soldier, by the Court Martial alone, without any adjudication by the Civil Magistrate, was a point not within the jurisdiction of the Military Court. For, if this adjudication by the Military Court is good, the Civil Liberty of all your Majesty's subjects is placed under the controul of Courts Martial; who may, if they please, adjudge any man to be a Soldier, and punish him by Martial Law.

“The Mutiny Act has not allowed to Military Courts the power of trying the question, Whether or not a man is a Soldier?

Q

So

So that if that, or any other question not within their cognizance, comes before them, they must send it to be tried in the Courts having jurisdiction, by a Jury of the Country. And to that Jury your Majesty's Petitioner claims to be sent.

“ When your Majesty's Petitioner was first illegally seized by a Serjeant of the Guards, the Petitioner applied for, and obtained a Writ of Habeas Corpus. The Return made to the Writ was, that the Petitioner was a non-commissioned Officer in your Majesty's 74th Regiment of Foot; which, though your Petitioner did then, as he does now deny, yet such Return was judged, by the Chief Justice of the King's Bench, to be legally sufficient, whether true or not; and he was remanded accordingly.

“ In order to obtain a legal and constitutional Redress for this illegal and unconstitutional Caption, Imprisonment and
Trial,

Trial, your Petitioner has caused Actions to be brought, in your Majesty's Court of Common Pleas, against Joseph Turtle, the Serjeant of the Guards who seized him; and against Samuel Lunt, the Serjeant Major, by whose Warrant he was imprisoned in the Savoy; and against William Hannam, Esq. Provost Martial of your Majesty's prison of the Savoy, for having made a false Return to the Writ of Habeas Corpus; and your Petitioner means farther to pursue such other means for legal redress, to which he shall be by his Counsel advised.

“ Your Majesty's Petitioner, therefore, humbly prays, that your Majesty will be graciously pleased to arrest the Execution of any Sentence which the said Court Martial may have pronounced against him; that your Petitioner may not be sent out of his native land, or be subjected to any Military Punishment, until a Jury of his Country shall have cut him off from Civil Society,

Society, and shall have determined, whether
he is, or is not amenable to Martial Law.

And your Majesty's Petitioner, as in
duty bound, shall ever pray," &c.

J. MARTIN,

SOLICITOR FOR THE PRISONER,

ON HIS BEHALF.

Etc, EHR

